

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application for:

**Richard A. Halavais, et al**

Serial No. 09/295,577

Filed: April 22, 1999

For: Individual Seat Selection Ticketing and  
Reservation System

Examiner: Gilligan, Christopher  
L.

Art Unit: 3626

DECLARATION PURSUANT TO 37 C.F.R. §1.132

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Milford Skane, hereby declare that:

1. I am a chief executive officer of MS Intergate, Inc.
2. MS Intergate is the assignee of the above identified patent application
3. I have reviewed U.S. Patent 5,797,126 issued to Helbling et al ("Helbling"), U.S. Patent 6,223,166 issued to Kay ("Kay"), U.S. Patent 5,897,620 issued to Walker et al ("Walker") and U.S. Patent 6,301,574 issued to Thomas et al ("Thomas") and the rejections under 35 U.S.C § 103, asserted by the U.S. Patent and Trademark Office against all of the pending claims of the present application, namely claims 1-4, 6, 11 16-17, and 24-34 and believe that these claims should be considered non-obvious over Helbling, Kay, Walker and Thomas based on the evidence provided herewith.

4. Our product CyberSEATS™ encompasses implementations that cover each of the elements of the pending claims, including displaying information "including

a plurality of available individual seats at the venue,” through “a client node unaffiliated and having no dedicated resident software,” “the capability of interactively selecting the specific individual seat from among the plurality of individual seats displayed” and “receiving from the end user a selection of the specific individual seat.”

5. The commercial success of this product is evidence of the non-obviousness of the claimed invention. The attached graphs (Exhibits A and B) show the growth of our business through contracts with clients and the subsequent sales of tickets using the CyberSEATS™ software. We began signing contracts for the use of CyberSEATS™ in 1999. From 1999 until 2002 our clients participated testing of the CyberSEATS™ product and utilized components of the system. The client numbers depicted in Exhibit A are the total number of clients contracting for the use of CyberSeaths™ during the respective years. The client number grew steadily until 2005. In 2004, our competitors began introducing products that copied the claimed features of the above identified application. As a result, the number of our clients declined as can be seen the numbers for 2005 and 2006.

We began selling tickets through CyberSEATS™ in March of 2002. The ticket sales depicted in the graph of Exhibit B represent all ticket sales made through the CyberSEATS™ system for all of our clients during this time period. The ticket sales grew steadily, reaching a peak in March of 2004. Sales subsequently declined due to the implementation of individual seating selection for a particular venue allowing a customer to select a specific available seat through a general web browser in the products and services of our competitors at that time. Sales declined because our competitors were better positioned in the market place and without exclusivity on these claimed features of the present application we were not able to compete successfully with out competitors.

This data depicted in Exhibits A and B demonstrate the commercial success of CyberSEATS™ after its introduction by MS Intergate, Inc. CyberSEATS™ was MS Intergate's first significant product in this market and its success is based on the features that it provides, because MS Intergate, as a new entrant to this market, does not have other resources or advantages in this market. As is well known, this field is dominated by well established companies such as Ticketmaster of West Hollywood, CA and Tickets.com of Costa Mesa, CA.

Declarations from our customers (Exhibits C-G) have been submitted herewith that demonstrate the close relationship or nexus between the success of our CyberSEATS™ program for selling tickets and the claimed features of the present application. Each customer has indicated that the reasons for contracting with MS Intergate for the CyberSEATS™ program are directly related to the claimed features.

6. The copying of these claimed elements by our competitors is further evidence of the non-obviousness of the claimed invention.

In 1999 and 2000 we were finishing the portions of CyberSEATS™ that allowed the public to purchase specific seats to travel, sporting, fine art or any other venues that allowed individual seating via the internet while browsing through unaffiliated hardware and software. MS InterGate, Inc. approached many entities in these areas of business and entered into talks to contract our services and software in partnering to sell their tickets to the public. Contacts were made with the major airlines, cruise ship lines, hotel chains, sporting leagues, individual theaters and stadiums, ticketing companies and ticket broker companies.

Tickets.com was contacted and entered into a contract with MS Intergate for services using parts of CyberSEATS™. MS Intergate handled 25 of the Major League Baseball teams' view and location duties that are integrate into Tickets.com internet tickets sale. Further services including individual ticketing was to come as the contract

for a 5 year period. However, the management of Tickets.com made it known that they would start developing their own software after viewing our software. MS Intergate warned them against copying our software; however, they have gone ahead and put up sites with software that is the same as CyberSEATS. One such sites is Battleintheballroom.com (Exhibits I and J), which had been our customer and in possession of copies of our software prior to moving to Tickets.com. Exhibit I is a screenshot of a seating chart from Battleintheballroom.com allowing the selection of a specific seat (check mark in row 14, seat 21). Exhibit J is a subsequent screen shot from Battleintheballroom.com showing the shopping cart with the selected ticket in row 14 and seat 21 ready for purchase. These screenshots were captured April 16, 2007.

Choiceticketing.com has also copied our software (See for Example, Exhibits K, L and M). Exhibit K is a screenshot of choiceticketing.com showing a list of their current clients including the New Orleans Opera. Exhibit L is a subsequent screenshot from a site provided by choiceticketing.com showing a seating chart for the New Orleans Opera where seat in section C, row R and seat 11 has been selected (check mark). Exhibit M is a subsequent screenshot from the same site showing an order summary page with the selected seat at section C, row R, seat 11 ready for purchase. We entered into a contract with them in 1999 and all of their customers who sold tickets over the internet used CyberSEATS™. In late 2003 and early 2004 we noticed they were working on developing their own software. They seemed to be working with Weston Playhouse who had the new .NET version of our CyberSEATS™ software on their server. Choiceticketing.com also had access to our servers and software as we worked together to service their customers. In April of 2004 they started to pull their customers from MS Intergate and provided them with their software which replicated the functionality of CyberSEATS™. They also blocked us from removing our software giving them access to use our code to further develop their software. From 2004 forward our ticket sales

numbers steadily declined as more and more customers were told by Choiceticketing.com to switch or they would not be covered for their box-office software.

TicketMaster was involved in talks with us in 1999 through 2001 and even went as far as to have us develop a demonstration for the Staples Center, in Los Angeles, to show our software to them for use with their 6000 plus venues. A lot of interest was shown, but ultimately did not result in a contract. Today they are actively working on the same type of software for themselves while having had the advantage of seeing ours.

Other software companies have followed suit by providing the claimed features of individual seating display and selection through unaffiliated hardware and software including Glitnir Ticketing (Exhibits N, O and P), who copied our software from the Staten Island Yankees (one of our customers), Center Stage and New Concepts, who also had access to our software through our customers or directly from us via contract. Exhibit N is a screenshot from glitner.com showing customers of Glitner Ticketing. Exhibit O is a subsequent screenshot from a page provided by Glitner Ticketing showing seating availability for the Long Island Ducks in section 118. Exhibit P is a subsequent screenshot showing the selection of seats 10 and 11 in row H, as well as providing an option for the purchase of these selected tickets. There are many more companies that are coming out with their own software packages now that copy these claimed features. The following companies have contracted with customers of MSI and thus have had access to our software and many have replicated the claimed features: BoxOfficeAvenue.com; PickYourSeats.com; TicketGuys.com; Artstix; RepaetSeat.biz; Etix.com; TicketWeb.com; Vendini.com; Wcit.net; SeatAdvisor.com; and TicketsWest.com

7. The commercial success of the CyberSEATS™ software which encompasses the claimed elements of the present application prior to the copying of these features by our competitors demonstrates that this combination of elements was not obvious at the time the application was filed. The subsequent copying of these features further supports this assertion. The resulting decline in sales due to the copying of the claimed features and the statements from our customers indicating that it was these features that prompted them to contract with MS Intergate also clearly shows the connection between the commercial success and the claimed features of the present application.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent issued thereon.

Respectfully submitted,

Dated: 4/26, 2007

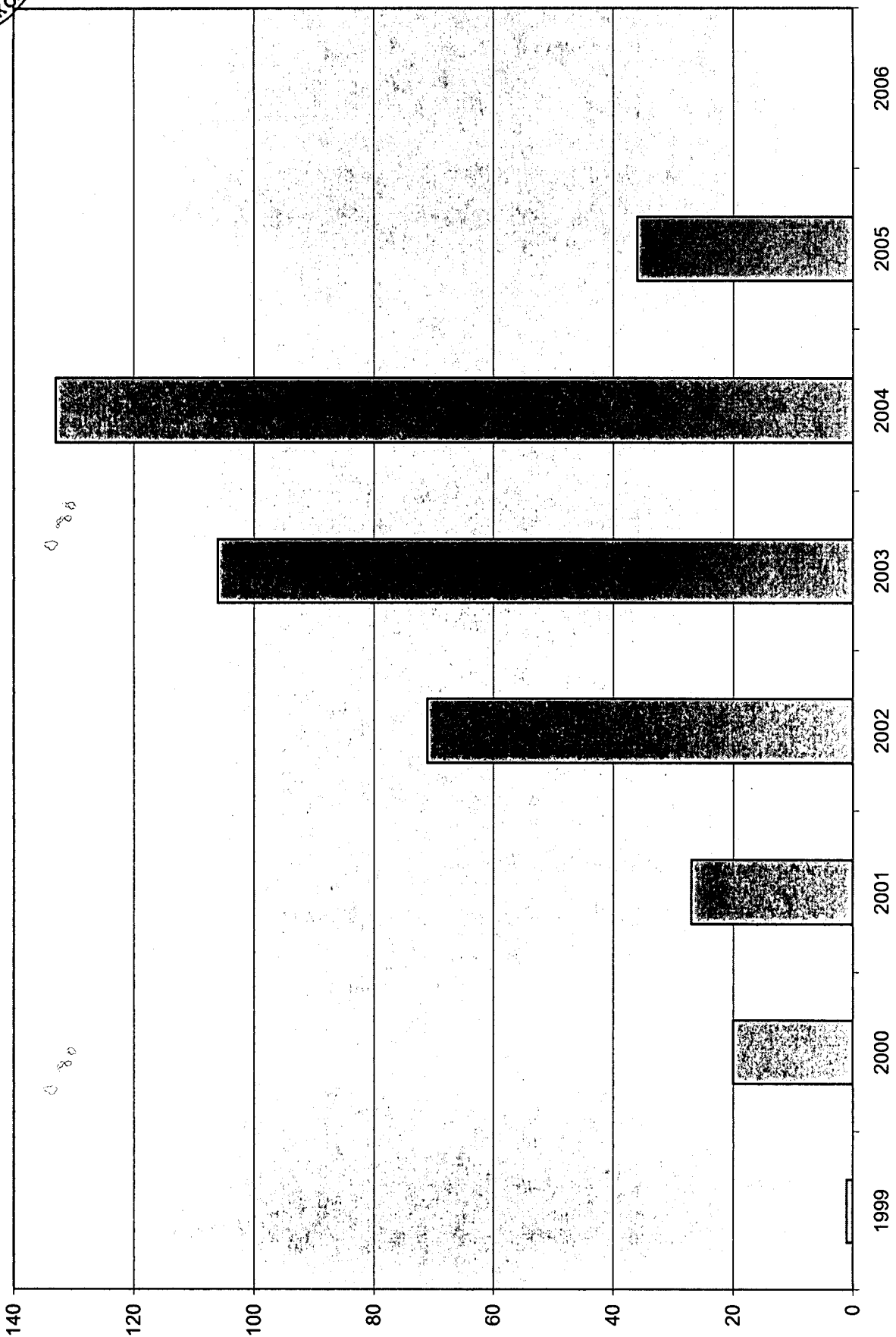
  
Milford Skarie

CEO MS Intergate, Inc.

Enclosures: Exhibit A (Contracting Customer Graph)  
Exhibit B (Ticket Sales Graph)  
Exhibits C-M (Supporting Declarations)  
Exhibits I and J (Battleintheballroom.com Screenshots)  
Exhibits K, L and M (Choice Ticketing Screenshots)  
Exhibits N, O and P (Glitner Ticketing Screenshots)

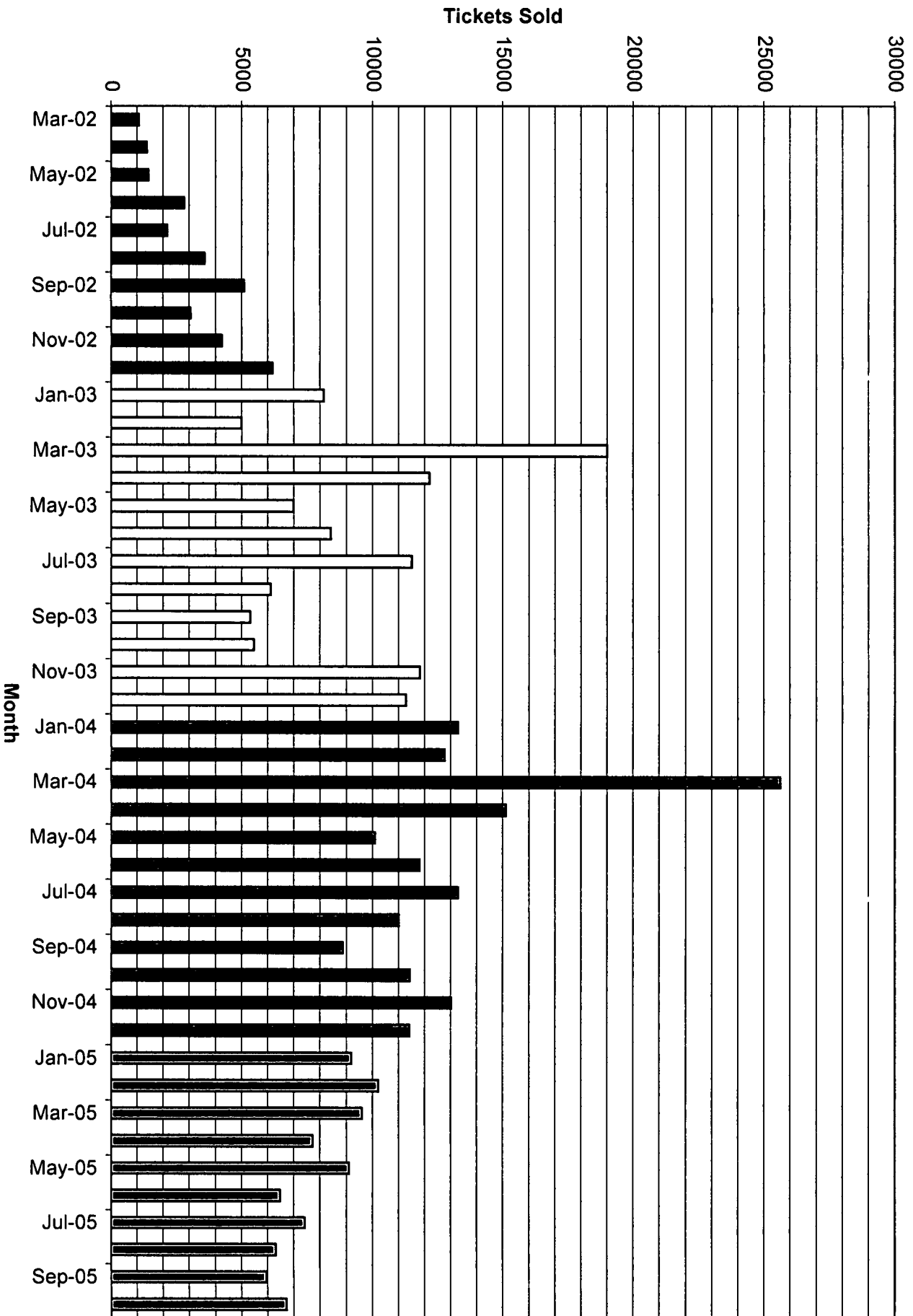


## EXHIBIT A



## EXHIBIT B

CyberSEATS Ticket Sales



## EXHIBIT C